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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,892	02/23/2007	Gurusiddappa Malleshi Nagappa	U 016346-8	7548
140	7590	04/21/2010		
LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023			EXAMINER BECKER, DREW E	
			ART UNIT 1782	PAPER NUMBER
			NOTIFICATION DATE 04/21/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,892	<b>Applicant(s)</b> NAGAPPA ET AL.	
	<b>Examiner</b> Drew E. Becker	<b>Art Unit</b> 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/14/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of group I in the reply filed on 2/18/10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 9 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 and 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

4. Claim 1 recites an "optimum moisture" and drying to an "optimum level". It is not clear what level of moisture would be considered "optimum".

5. Claim 1 recites a "pseudo-elastic texture". It is not clear what types of textures would be considered "pseudo-elastic" as opposed to simply elastic.

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6. Claim 1 recites “near uniform size”. It is not clear what degree of difference would be considered “near uniform”.

7. Claims 1 and 4 recite “high temperature short time” treatment. It is not clear what temperatures would be considered “high” or what amount of time would be considered “short”.

8. Claims 6 and 13 recite “carbohydrate digestibility”. It is not clear property is being referred to here. It is not clear whether this is directed to the degree of gelatinization.

9. Claim 7 recites “the millet is selected from the group consisting of... sorghum”. This appears to contradict the requirement that the grain be a type of millet. It is not clear whether sorghum can substituted for the millet, or not.

10. Claim 12 recites “smooth glossy surface, crispy and spongy texture”. These descriptive terms appear to contradict one another. It is not clear whether they refer to different portions the expanded product or not.

11. Claim 14 recites the product is “coated with an edible, fruit or vegetable powder, sweetening agent selected from sugar, malt powder, malt extract, and edible colors”. It is not clear which choices are a subset of the overall set. It is not clear if malt powder, malt extract, and edible colors are considered to be a sweetening agent. It is not clear whether the term “edible” describes the following choices, or whether any “edible” would satisfy the claim.

***Claim Rejections - 35 USC § 103***

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12. Claims 1-3, 5-7, 10-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson [Pat. No. 2,289,529] in view of Malleshi [US 2003/0185951].

Thompson teaches a method for preparation of expanded cereal grains by removing the outer layer or seed coat of the grain (Figure 1, I), soaking the grain to equilibrate the moisture level (Figure 1, III), resting or tempering the grain for a period of time (page 2, column 1, lines 62-65), slightly flattening the grain by passing through flaking rolls (page 2, column 2, line 46; Figure 1, VII), drying the compressed grain (Figure 1, VIII), subjecting the grains to high temperature short time heating in an oven (Figure 1, IX), drying to a moisture content of 8-12% (page 2, column 1, line 35), the oven using air at 490°F (page 2, column 2, line 33), precooking the grain with steam (Figure 1, IV),

Thompson does not recite millet as the grain, grading the millet to uniform size via screening/sieving, the millet being hydrothermally treated finger millet, 15-35% moisture and flattening to 0.7-1.0 mm thickness and 1.5-1.6 mm diameter, a preferable thickness of 0.8-1.0 mm and diameter of 1.5-1.6 mm, the precooking resulting in 95-100% carbohydrate digestibility, aspiration, the grain being free of seed born microflora, the product containing 4-8% protein, 1-1.5% fat, 13-16% dietary fiber, and 98% carbohydrate digestibility,

Malleshi teaches a method for decorticating finger millet (title) by soaking/steeping in water, drying to 8-16% moisture, decorticating the millet in abrasive cereal mill, aspirating the seed coat to produce decorticated millet, grits, and a seed

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coat material (Figure), separating the components by sieve grading (paragraph 0054), the desire to use the decorticated millet in further processing such as flaking and popping similar to other cereal grains (paragraph 0061), the decorticated millet possessing about 6.3% protein, about 0.9% fat, and about 14.7% dietary fiber (claim 1).

It would have been obvious to one of ordinary skill in the art to incorporate the millet decortication steps of Malleshi into the invention of Thompson since both are directed to methods of processing grain, since Thompson used grains which have had their bran removed (Figure 1, I), since Thompson teaches using other types of cereal grains (page 1, column 2, lines 30-35), since millet was a commonly consumed type of grain which was known to have its bran removed as taught by Malleshi, since Malleshi also teaches that decorticated millet can be further processed such as by popping or flaking (paragraph 0061), and since consumers would have desired puffed forms of grains, such as millet, for their improved texture and taste as well as their use as a breakfast cereal as taught by Thompson (page 1, column 1, lines 1-42).

It would have been obvious to one of ordinary skill in the art to adjust the size of the millet and carbohydrate digestibility of the puffed millet of Thompson, in view of Malleshi, since Thompson did not mention a grain size after compressing or degree of carbohydrate digestibility, since the claimed size ranges would have been done during the course of normal experimentation and optimization procedures to arrive at the most suitable size, since Thompson already taught cooking the grain in steam (Figure 1, IV) which likely would have resulted in full gelatinization of the grain, and since a high

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carbohydrate digestibility level would have provided a greater nutritional content to the food product.

It would have been obvious to one of ordinary skill in the art to provide puffed millet free of seed born microflora in the invention of Thompson, in view of Malleshi, since Thompson already included cooking of the grain with steam (Figure 1, IV) which likely would have resulted in the death of all microflora, and since the killing of all microflora in the grain would have resulted in a safer food product for the consumer.

13. Claims 4, 8, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson, in view of Malleshi, as applied above, and further in view of Alderman [Pat. No. 2,526,792].

Thompson and Malleshi teach the above mentioned concepts. Thompson and Malleshi do not recite oven heating for 15-45 seconds, the oven air being 180-200°C, the grain volume being 5-8 times greater, and an edible coating. Alderman teach a method for puffing cereal grains, such as millet (column 2, line 25), by drying the grain to 5-25% moisture (column 2, line 62), compression of the grain (column 2, line 65), oven puffing with air at 300-600°F or 149-316°C for 0.5-3.0 minutes (column 4, lines 10 & 18), the puffed grain possessing a volume which is 6-12 times greater (column 4, line 40), and coating the grains with sugar (column 1, line 50). It would have been obvious to one of ordinary skill in the art to incorporate the processing parameters of Alderman into the invention of Thompson, in view of Malleshi, since all are directed to methods of processing grains, since Thompson was primarily concerned with making breakfast cereal, since Malleshi already taught the use of millet, and since these were commonly

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known and practiced in the art for the production of breakfast cereal as shown by Alderman.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1782